REMARKS

The present Amendment is in response to the Examiner's Office Action mailed October 19, 2007. Claims 1-33 are now pending in view of the above amendments.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding. Applicant does not admit to the characterizations of the art advanced by the Examiner regarding the teachings of the cited art with respect to the claimed invention and only identifies some of the differences between the claimed references and the claimed invention. Applicant reserves the right to address the Examiner's characterizations in the future if necessary. Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Double Patenting

The Office Action rejected claims 1-14 as conflicting with claims from U.S. Application Serial No. 10/735,801. Applicant respectfully traverses. Double patenting requires the conflicting claims to be identical. While Applicant does not admit that the claims are conflicting, Applicant submits that the rejection is moot in view of an amendment filed in Application Serial No. 10/735,801 on March 18, 2008. Because at least the identical element of "means for combining the network data carried on the first segment and the second segment of the network cable and delivering the combined network data to the first set of tap ports and the second set of tap ports, wherein a different network device can connect with each of the first and second set of tap ports and each different network device can receive the combined network data" is not

present in the pending claims, Applicant respectfully requests withdrawal of the double patenting rejection.

Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 1-3, 15, 16, 17, 19-24, 26, 27, and 29-31 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of *Sørhaug et al.* (U.S. Patent No. 6,424,627) and further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376).

The Examiner rejects claim 14 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of *Sørhaug et al.* (U.S. Patent No. 6,424,627) further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376) as applied to claims 1 and 13 above, and further in view of *Bouthillier et al.* (U.S. Patent No. 6,092,724).

The Examiner rejects claim 18 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of *Sørhaug et al.* (U.S. Patent No. 6,424,627) further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376) as applied to claims 15 and 17 above, further in view of *Bunker et al.* (U.S. Patent Publication No. 2003/0056116) and further in view of *Chinnock et al.* (U.S. Patent No. 5,426,427).

The Examiner rejects claim 25 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of *Sørhaug et al.* (U.S. Patent No. 6,424,627) further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376) as applied to claim 16 above, and further in view of *Pontis et al.* (U.S. Patent Publication No. 2004/0007526).

The Examiner rejects claim 28 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of *Sørhaug et al.* (U.S. Patent No. 6,424,627) further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376) as applied to claim 27 above, and further in view of NetOptics (4x1 GigaBit Tap).

The Examiner rejects claims 32 and 33 under 35 U.S.C. § 103 as being unpatentable over *Worrall et al.* (U.S. Patent Publication No. 2006/0153177) in view of

Sørhaug et al. (U.S. Patent No. 6,424,627) further in view of *Yanacek et al.* (U.S. Patent No. 5,940,376) as applied to claim 26 above, further in view of *Tomonaga et al.* (U.S. Patent No. 5,610,913) and further in view of *Gromov* (U.S. Patent No. 6,975,209).

Applicant respectfully traverses the rejections under s 103 at least on the grounds that the references – alone or in combination- fail to teach or suggest every limitation of the pending claims.

Claim 1 is directed to a network tap that permits an attached device to communicate with a node of a network. Claim 1 further recites "means for inserting device data from the attached device into the network cable without disrupting the flow of data therein". The Examiner acknowledges that *Worrall* fails to teach this aspect of claim 1 and suggests that this requirement is taught by *Sørhaug*. Applicant traverses.

For example, *Sørhaug* specifically states that "the medium monitor may interrupt medium data transfer in either medium direction and insert its data for diagnostic or other network purposes." *See* abstract. *Sørhaug* further states that the "system monitor or network analyzer can selectively insert data in either direction to provide complete diagnostic testing of the channel." *See* col. 2, lls. 12-15. The interruption of network data is further illustrated in Figure 3, where the "detected signal then results in a corresponding control signal sent to the link detect circuit 60, which in turn provides a signal to serial multiplexer 100, causing the recovered monitor 40 and data clock signal to be sent to the synchronizing flip-flop 102 for transmission to the system devices 55." *See* col. 3, lls. 16-21. This appears to interrupt data from the transceiver 62 via the clock recovery device 66. As a result, the "medium monitor may interrupt medium data transfer in either medium direction and insert its data for diagnostic or other network purposes." *See* abstract.

In contrast, claim 1 requires means for inserting device data from the attached device <u>without disrupting the flow of data therein</u>. Interrupting medium data transfer, as taught by *Sørhaug*, fails to teach or suggest the elements of claim 1. Because the Office Action has not established that the cited art teaches or suggests this element of claim 1, among others, Applicant respectfully submits that claim 1 is patentable over the cited art.

Claim 15 recites that the first tap port and second tap port are configured to operate in a plurality of modes, each mode being defined by enabling or disabling the ability of the first tap port and second tap port to receive network data and device data. The Office Action suggests that this element of claim 1 is taught by *Yanacek*. Applicant respectfully traverses.

As indicated, in claim 15 the first and second tap ports are configured to operate in a plurality of modes, each mode being defined by enabling or disabling the ability of the first and second tap port to receive network data and device data. The Office Action suggests that *Yanacek* discloses this aspect in Figures 2, 10A-10C. Figures 2 and 10A-10C, however, relate to the ability to establish a connection between a source and/or destination to a probe and to setting up a call-tapping path. *See* Figure 2; col. 5, lls. 45-47.

This is further illustrated in Figure 3 of *Yanacek*. Figure 3 discloses that in a simple case of call-tapping, the probe 118 is attached to the same switch 300 as are the source and destination. *See* col. 6, lls. 25-27. A tap request from the user is sent to switch 300 indicating the addresses of the source and destination nodes. *See* col. 6, lls. 27-30. Once the entry 412 in the tap table 410 is complete, the entries in the connection table 400 for switch 300 must be changed so that data originating from the source S is directed to the port 306 and data originating from the destination D is also directed to the port 306 while maintaining the connection between the source and destination. *See* col. 6, lls. 62-67.

This example illustrates a bi-directional tap in the sense that the probe receives data generated by both the source and the destination. *See* col. 7, lls. 18-25. However, there is no teaching or suggestion of enabling or disabling the ability of the first tap port and second tap port to receive network data <u>and</u> device data. In other words, the bi-directional tap cannot be enabled or disabled to receive network data <u>and</u> device data. More specifically, there is no teaching or suggestion that the tap is receiving device data from the attached probe. Rather, *Yanacek* teaches that the bi-directional tap is only sending data from both the source and the destination to the probe.

Thus, the modes taught by *Yanacek* relate to setting up a bi-directional tap that can data is received "from the destination D to the source S" (*see* col. 7, lls. 19-20) and

"from the source S to the destination D" (*see* col. 7, lls. 15-16). Similarly, a uni-direction tap, as taught by *Yanacek* is one where only "data originating from the source S was directed to the probe 118." *See* col. 7, lls. 29.

In contrast, claim 15 requires that "each mode being defined by enabling or disabling the ability of the first tap port and second tap port to receive network data <u>and</u> device data". There does not appear to be any suggestion or teaching in *Yanacek* that the tap connected to the probe 118 can be enabled or disabled with respect to receiving device data. As illustrated herein, the probe 118 only receives network data when configured uni-directionally and bi-directionally.

For at least these reasons, Applicant respectfully submits that claim 15 is patentable over the cited art. Claim 26 has similar elements and is patentable over the cited art for at least the same reasons. Because claims 1, 15, and 26 are patentable, the dependent claims rejected under section 103 are patentable for at least the same reasons.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of March, 2008.

Respectfully submitted,

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